IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

CRL.A.No. 92 of 1999()

CC.836/1995 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

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APPELLANT/COMPLAINANT:

B.RAVEENDRANATH,
SOMABHAVAN, WARD NO.3,
CHERTHALA SOUTH PANCHAYATH,
KADAKKARAPPILLI P.O.,
CHERTHALA.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT/ACCUSED:

R.MADHUSUDANAN NAIR,
PANANGATTU HOUSE,
KADAKKARAPALLI P.O.,
CHERTHALA.

BY ADV. SRI.JOHN JOSEPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J

CRL.A.No. 92 of 1999

Dated this the 25th day of May, 2007

ORDER

The trial court had acquitted the accused on two grounds, viz., the appellant/complainant miserably failed to prove the transaction between the appellant and the respondent/accused. The trial court also found in this point that the appellant/complainant did not prove the cheque in question, Exhibit-P1, was signed rather executant by the respondent as alleged in the complaint. Secondly, the trial court found that there was no service of notice by the appellant to the respondent on receipt of the intimation of dishonbour of the cheque from the bank of the appellant. The counsel appearing for the appellant submits that the above two findings are not based on evidence. The trial court on analysis of the evidence of PW1, the appellant/complainant, had come to the conclusion that the appellant had no specific case or consistent case with regard to the filling up of the cheque by the respondent and also with regard to the hand writing of the cheque in question. According to him there were eye witnesses

to the filling up of the cheque by the respondent. No such witnesses were examined before court. The specific allegation in the complaint was the respondent had received or rather borrowed an amount of Rs. 1,30,000/- from the appellant and the cheque-in-question is for an amount of Rs. 1,50,000/- for which the explanation came from the appellant was that Rs.20,000/- is by way of interest. In the above circumstances, the finding of the trial court that the appellant failed to prove the execution of the cheque in question and the transaction which lead to the passing of cheque -Ext.P1 is on evidence and hence the first point is correctly found by the trial court. With regard to the second point the trial court found that even though Ext.P3 notice was sent to the respondent by the appellant, the same was not served on the respondent as evidenced by Exts.P4 and P5. As per the endorsement shown in the cover of Ext.P4, it is recorded as 'returned unclaimed' and it was also stated that 'office locked'. If this court considers that the first remark is correct, this court can come to the conclusion under the provisions of Section 27 of the General Process Act that there was sufficient service. But with regard to the second remark made by the postman that the

'office locked, this court can come to the conclusion that there was no service as such. In the above circumstances, this court is of the view that the second point urged by the trial court creates some suspicion. But on the 1st point itself, this court is not proposed to set aside the finding made by the trial court hence the second point need not be considered.

In the above circumstances, the appeal is dismissed as above.

(K.THANKAPPAN,JUDGE.)

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/True copy/

P.A TO JUDGE